

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN DIANE RICE**, on January 21, 2003 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Verdell Jackson, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Norman Ballantyne (D)
Rep. Bob Bergren (D)
Rep. Bruce Malcolm (R)
Rep. Jim Peterson (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Donald Steinbeisser (R)
Rep. Karl Waitschies (R)

Members Excused: Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Carol Lambert (R)
Rep. Veronica Small-Eastman (D)
Rep. Bill Thomas (R)

Members Absent: None.

Staff Present: Lisa Gallagher, Committee Secretary
Krista Lee Evans, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp refers to the material immediately following.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB: 299, 1/13/2003; HB: 311,
1/14/2003; HB:322, 1/14/2003
Executive Action: none

HEARING ON HB 322

Sponsor: REPRESENTATIVE DAVE GALLIK, HD 52, Helena

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 0 - 1.6}

REP. DAVE GALLIK, stated that this is a dog bill that adds into current law that if a dog is shot that has tags, it is the responsibility of the shooter to inform the sheriff and he will inform the owner of the dog. This is only if the dog is wearing tags. There is no fine if you do not call the sheriff, however this is just a way to inform the owner.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 1.8 - 5.9}

Fred Paoli, Livingston, stated that all the things that were objectionable in the bill that was carried last session have been taken out of this bill. This used to be a city verses rancher bill and now it is just a courtesy bill. He said that he had two good hunting dogs that a rancher shot down in Livingston. He spent time and money looking for his dogs because he thought someone might have taken them, and he does not want that to happen to others. The rancher has every right to shot a dog if it is harassing his cattle, however some ranchers shot dogs if they cross their fence and that it not right. This bill will deter the rancher from shooting the dog just because it crossed his fence. There is no fine; this is a good citizens bill and that means doing what is right.

Mike Hankins, Livestock Owner, Lewis & Clark County, stated that he is in favor of this bill because it brings law enforcement into the picture. He has shot nine dogs in the last two years, and seven of those dogs were tagged. Now when he shots another dog he will be able to call the sheriff and establish evidence.

REP. BILL THOMAS came in.

Opponents' Testimony: none

Informational Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 10.5 - 13.6}

Dick Everett, Livingston, said that most ranchers use the three S's (shot, shovel, and shut up), however Livingston has figured

out that this does not work because it still has a big problem with dogs. There are only four types of dogs that can roam freely and that is all; 1)guard dogs; 2)herd dogs; 3)hunting dogs; 4)police dogs. All other dogs have to be on a leash. He stated that he has lost over \$40,000 in sheep, and this bill will help him get restitution for those sheep because they will be able to establish evidence with the help of law enforcement. Usually the restitution is paid through the liable party's homeowners insurance and this will ensure that they do not have a dog sometime soon.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 13.8}

REP. RICE asked **REP. GALLIK**, if the word "knowingly" should be placed in the bill, in case a rancher shots a dog and it runs home and dies. **REP. GALLIK** deferred the question to **Fred Paoli**, who said that he had no objection to that.

REP. WAITSCHIES asked **REP. GALLIK**, "What does this bill do that is not already done, because there is no law enforcement provision?" **REP. GALLIK** said the person who shoots the dog has an obligation to inform law enforcement so they can inform the owner. It also forces the sheriff to document it.

Closing by Sponsor:

REP. GALLIK stated that this bill reinforces common courtesy and now involves law enforcement.

HEARING ON HB 299

Sponsor: REPRESENTATIVE JIM PETERSON, HD 94, Buffalo

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 19.3 - 25.1}

REP. JIM PETERSON, said this bill will revise the liability of livestock. In the Supreme Court case of Madrid vs. Zenchiku the court decided on strict liability of the owner. With this interpretation of the law there is no chance to review the liability of the owner. It is just a matter of the amount of damages. This bill would amend section 81-4-215 of the Montana Code Annotated, and make the owner liable if grossly negligent. In the 2001 Legislative Session the law was amended in the case of vehicle livestock accidents and all this bill is doing is

extending that statue to the owner of the cattle if their cattle get out. With strict liability there is only talk about damages and not about why. REP. PETERSON handed out a copy of the statue that applies to the liability of owners of stock for trespass.

EXHIBIT (agh12a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 25.2 - 29.8}

John Bloomquist, Attorney for the Montana Stock Growers

Association, stated that this case was decided over 115 years ago, and the Montana Supreme Court left any standards that were to be applied up to the decision of the legislature. Right now if cattle get out, the owner of the cattle has no options. The standard for the vehicle livestock accident should be the same standard if your cattle get out; they need to be consistent. If this bill passes it will be applied prospectively from here on out.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.5}

Ed Lord, Philipsburg, said that a common scenario is that you share a fence with someone and you keep up your half, but they do not. Your cattle get out and you are completely responsible. The owner has no options with strict liability.

Robin Kirscher, Montana Cattle Women, stated that they are in support of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 2 - 4.6}

Lynn Cornwell, Rancher, said that his sheep were killed by a railroad engine and the railroad wanted him to pay for damages to the engine. There are times when the livestock owner is not always responsible but with this interpretation of the law the owner is always liable.

{Tape: 1; Side: B; Approx. Time Counter: 4.6 - 5.4}

John Youngberg, Montana Farm Bureau, said there was a scenario where a gate was left open and the cattle got out and walked down the road. Someone came along and opened a gate to let the cows in so they would be off the road. The cows did damage to the landscaping of this property and the owner was completely responsible for all the damages caused by the cows.

Dick Ebert, Montana Wool Growers Association, said that they are in support of this bill.

Tim Huls, Montana Dairy Association, stated that they are in support of this bill as well.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 6.3 - 10.2}

Travis Ahner, Montana Trial Lawyers, stated that they are against this bill because it goes too far; homeowners have no recourse and the owner of the livestock has no responsibility. Line 14 of the bill deals with a legal fence. The definition of a legal fence is not less than 42 inches and no more than 48 inches. So if a cow goes through a fence that does not fall into this definition the owner is not liable. This bill limits the liability of the owner, and for that reason it not a good bill.

{Tape: 1; Side: B; Approx. Time Counter: 10.3 - 21.5}

Bob Whalen, Attorney, Butte, said that this law is there because of the Madrid vs. Zenchiku case where a man was charged by a bull and broke his neck through no fault of his own. There is good reason for the strict liability. If you establish a fencing structure to protect yourself and a bull goes through the fence then it should be the responsibility of the owner. Right now the only protection that you have as a homeowner is to put up a fence. With the passage of this law there will be no reason to put up a fence because if the bull goes through the fence it is not the owner's fault. Gross negligence is an impossible standard to prove. Currently the law gives a remedy to the landowner who puts up a legal fence. This standard has been kept up because it protects people and landowners. This bill will make it so that the innocent party will have to pay; it should be the person who is making the money off the bull who should have to pay. The livestock owner can pass the costs on through the business where the innocent party is not going to be able to. The way the law stands currently it provides the landowner protection in an open range by putting up a fence however, if this bill passes we are taking that away.

{Tape: 1; Side: B; Approx. Time Counter: 23.0}

REP. LAMBERT came in.

Questions from Committee Members and Responses:

REP. JACKSON asked **John Bloomquist** if intentional misconduct is the same as gross negligence. **John Bloomquist** said that gross negligence is proving that they did not exercising slight care, while negligence is just the fact that it happened. He also said

that there is a difference between intentional misconduct and gross negligence.

{Tape: 2; Side: A; Approx. Time Counter: 0}

REP. JACKSON asked **John Bloomquist** if he would clarify on the definition of a legal fence whether it is a minimum standard or a maximum standard.

John Bloomquist said there is a definition of a legal fence and the height of the fence does matter. Strict liability would not apply if the fence was not within the definition.

REP. JACKSON asked **John Bloomquist** it is true that if a fence is illegal if it is one foot too high. **John Bloomquist** said that is does not fit within the legal parameters but that does not necessarily mean that it is an illegal fence.

REP. JACKSON asked **John Bloomquist** if the fence was one foot too high and a bull broke through the fence would anyone be responsible. **John Bloomquist** said "Yes," and that this bill tries to clear that up by trying to get away from strict liability.

REP. JACKSON asked **John Bloomquist** if there is a difference between negligence and gross negligence. **John Bloomquist** said that the owner is grossly negligent if lack of liability is intentional. Negligence is a question of fact, and it usually goes to a jury. Gross negligence elevates the standards. Strict liability is a trial lawyer's dream because it is just a question of damages. With gross negligence you have to prove that the owner did not show slight care, or inactivity. "It is a balancing question for the legislature."

{Tape: 2; Side: A; Approx. Time Counter: 7.4 - 9.5}

REP. LAMBERT asked **John Bloomquist** if there is a neighbor who through the years has had a piece of fence down and you have been a good neighbor throughout the years and then you decided it was time to do something about it, would the fact that for so long you did nothing about it have a barring effect, would it become a rite of domain. **John Bloomquist** said that the livestock owner will not get some kind of prescriptive use or grazing rights out of your property.

REP. BERGREN asked **John Bloomquist** if a bull crosses a fence at the same time every year could this be defined as gross negligence. **John Bloomquist** said that for a continuing pattern

of conduct to exist, the bull owner will not be negligent if he exercises care.

REP. LAMBERT asked **John Bloomquist**, "How much responsibility does the neighbor bare?" **John Bloomquist** said that you are liable with the law being strict liability.

REP. LAMBERT said, "So this bill will correct this?" **John Bloomquist** said that this bill will address the strict liability.

REP. RYAN asked **REP. PETERSON** if it was commonplace for a livestock owner to carry insurance. **REP. PETERSON** said that most livestock owners carry blanket liability insurance.

REP. RYAN asked **REP. PETERSON** if he was approached by any insurance companies. **REP. PETERSON** said, "No."

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 15.2}

REP. PETERSON said that with strict liability, fault does not need to be proven, only damages. This bill makes the statues consistent with the vehicle livestock accident, and without this change it is possible that insurance rates will go up.

HEARING ON HB 311

Sponsor: REPRESENTATIVE RON STOKER, HD 59, Hamilton

Opening Statement by Sponsor:

REP. RON STOKER stated that this bill was a request of the Montana Dairy Association, and what it does is rate eggnog as a Class I milk product instead of a Class II milk product. It also adds a fee to all classes of milk instead of just Class I.

Proponents' Testimony:

Tim Huls, Montana Dairy Association, said that currently the fees are being paid on Class I milk only and this bill would change that so the fees are being paid on all classes of milk. Class I milk is the liquid milk that we drink; Class II milk is cottage cheese, sour cream, and ice cream. Class III milk is cheese. This bill also changes the class category of eggnog to a Class I milk to comply with the federal government.

{Tape: 2; Side: A; Approx. Time Counter: 22.8 - 25}

Mark Bridges, Board of Livestock, stated that the fees are based on the costs, and if there is too much money coming in the department will lower the fees. They are not doing this to make money.

Bob Gilbert stated that **John Youngberg, Montana Farm Bureau**, had to leave the committee hearing however, he would like to go on the record in support of this bill.

Opponents' Testimony: none

Questions from Committee Members and Responses:

REP. WAITSCHIES asked **Mark Bridges** for a breakdown by percentage of classes of milk in Montana. **Mark Bridges** deferred to **Monty Nick, Bureau Chief for milk**, said that in 2002, Montana produced 287 million pounds of milk, 76% was Class I milk, 9% was Class II milk, and 15% was Class III milk.

REP. LAMBERT asked **Monty Nick** if bottled lattes were a milk product. **Monty Nick** said, "No."

REP. THOMAS asked **REP. STOKER** if there is a fiscal note for this bill. **REP. STOKER** said, "Yes." He requested one but it was not yet done.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.2}

REP. ANDERSON asked **Mark Bridges** if the fees where going to be lowered because the number of classes is increasing. **Mark Bridges** said "Yes," and the fees will end up being about 11% on all classes.

Closing by Sponsor:

REP. STOKER said this is a good bill and it should be passed.

ADJOURNMENT

Adjournment: 4:50 P.M.

REP. DIANE RICE, Chairman

LISA GALLAGHER, Secretary

DR/LG

EXHIBIT (agh12aad)